



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ghulam Nabi QAZI, et al.

Serial No.: 10/621,038 Group No.: 1655

Filed: July 16, 2003 Examiner: M.V. Meller

For: PLANT BASED AGENTS AS BIOAVAILABILITY / BIOEFFICACY ENHANCERS
FOR DRUGS AND NUTRACEUTICALS

Attorney Docket No.: U 014721-8

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION ACTION

In response to the Official Action of 18 May 2007, wherein the Examiner has required a restriction as between claims and drugs/nutaceuticals, Applicants hereby elect to prosecute in

CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10*

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the present application the claims of Group I, i.e., claims 1-28 and cyclosporin A. Claims 1-4, 20, and 28 read on the elected invention.

Applicants respectfully traverse the requirement for restriction. As discussed in MPEP 806.05(j), where as here there are related products, the inventions are distinct if and only if:

- (A) the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive;
- (B) the inventions *as claimed* are not obvious variants; and
- (C) the inventions *as claimed* are either not capable of use together or can have a materially different design, mode of operation, function, or effect.

The burden is on the examiner to provide an example to support the determination that the inventions are distinct.

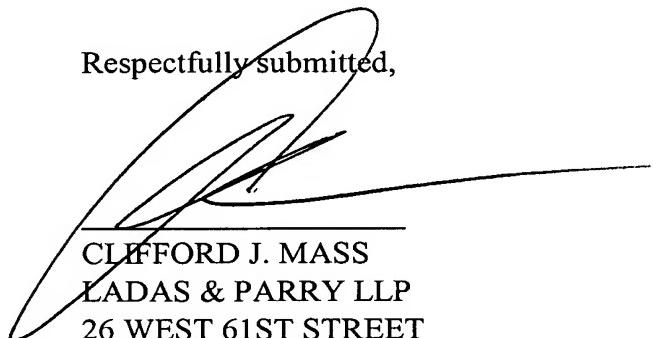
In the present case, the Examiner has respectfully not met the USPTO burden of showing, nor can he show, that the related products encompassed by the elected product claims are distinct. Indeed, the fact that the elected claims overlap in scope precludes a finding that the inventions **as claimed** are mutually exclusive and this precludes a finding that the inventions are distinct. See criterion (A) above.

Applicants respectfully request that the non-elected method claims be held in abeyance pending a determination of the allowability of the product claims. Upon the allowance of a product claim, Applicants would respectfully request rejoinder of method claims that depend

from or otherwise include all of the limitations of an allowed product claim in accordance with the provisions of MPEP 821.04.

Applicants have now responded completely to the aforementioned Official Action and now respectfully request an examination on the merits of at least the elected claims.

Respectfully submitted,



CLIFFORD J. MASS
LADAS & PARRY LLP
26 WEST 61ST STREET
NEW YORK, NEW YORK 10023
REG. NO.30,086(212)708-1890